

5. The aforesaid administration of the NECC drug occurred between: July 2012 and October 2012, specifically, on September 4, 2012, September 18, 2012, and October 2, 2012, by Nikesh Batra, M.D. at BKC Pain Specialists, LLC, located in Marion, Ohio.

6. Dr. Nikesh Batra, and healthcare facility BKC Pain Specialists, LLC, are hereinafter collectively referred to as “Clinic Related Defendants.”

7. Plaintiff adopts and incorporates by reference the following Causes of Action asserted against the Defendants in the Master Complaint:

- ☒ COUNT II: NEGLIGENCE AND GROSS NEGLIGENCE (Against UniFirst)
- ☒ COUNT III: NEGLIGENCE AND GROSS NEGLIGENCE (Against Clinic Related Defendants)
- ☒ COUNT IV: VIOLATION OF CONSUMER PROTECTION STATUTES (Against Clinic Related Defendants)

Plaintiff alleges violation of the following consumer protection statute(s):
O.R.C. §§ 1345.01 et seq. and O.A.C §§ 109:4-3-01 et seq.

- ☒ COUNT VI: VIOLATION OF M.G.L. C. 93A (Against UniFirst)
- ☒ COUNT VII: BATTERY (Against Clinic Related Defendants)
- ☒ COUNT VIII: FAILURE TO WARN (Against Clinic Related Defendants)
- ☒ COUNT IX: OHIO PRODUCT LIABILITY CLAIMS (Against Clinic Related Defendants)
- ☒ COUNT X: AGENCY (Against Clinic Related Defendants)
- ☒ COUNT XI: CIVIL CONSPIRACY (Against Clinic Related Defendants)
- ☐ COUNT XII: WRONGFUL DEATH PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)
- ☐ COUNT XIII: LOSS OF CONSORTIUM (Against UniFirst and Clinic Related Defendants)

☒ COUNT XIV: PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)

8. Plaintiff has complied with the applicable state law pre-suit requirements for filing this Short Form Complaint against the Clinic Related Defendants as required under Ohio Civil Rule 10(D)(2). See attached copy of the Affidavit of Dr. Matthew Lee, MD, RPh, MS dated October 3, 2013 at Exhibit 1.

9. Plaintiff has sent the pre-suit demand requirement necessary to bring the claims against UniFirst set forth below, as required under Mass. Gen. Laws Ann. Ch. 93A et seq. See attached copy of the UniFirst demand letter dated December 17, 2013 at Exhibit 2. Plaintiff does not now assert but will seek leave to amend to assert the following claims against UniFirst promptly after the time period for giving notice has expired:

☒ COUNT II: NEGLIGENCE AND GROSS NEGLIGENCE (Against UniFirst)

☒ COUNT III: NEGLIGENCE AND GROSS NEGLIGENCE (Against Clinic Related Defendants)

☒ COUNT IV: VIOLATION OF CONSUMER PROTECTION STATUTES (Against Clinic Related Defendants)

Plaintiff alleges violation of the following consumer protection statute(s):
O.R.C. §§ 1345.01 et seq. and O.A.C §§ 109:4-3-01 et seq.

☒ COUNT VI: VIOLATION OF M.G.L. C. 93A (Against UniFirst)

☒ COUNT VII: BATTERY (Against Clinic Related Defendants)

☒ COUNT VIII: FAILURE TO WARN (Against Clinic Related Defendants)

☒ COUNT IX: OHIO PRODUCT LIABILITY CLAIMS (Against Clinic Related Defendants)

☒ COUNT X: AGENCY (Against Clinic Related Defendants)

☒ COUNT XI: CIVIL CONSPIRACY (Against Clinic Related Defendants)

☒ COUNT XIV: PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)

10. Plaintiff, Donna Montee, suffered the following injuries as a result of the administration of NECC's drug: Plaintiff underwent epidural steroid injection ("ESI") procedures performed by Clinic Related Defendants between July 2012 and October 2012, specifically, on September 4, 2012, September 18, 2012, and October 2, 2012. The NECC drug used during the ESI procedure was drawn from vials that were part of the three lots of fungus contaminated MPA vials that NECC recalled on or about September 26, 2012. Following her ESI procedures, Plaintiff began experiencing flu-like symptoms, including but not limited to, headaches, body aches, fatigue, fever, confusion and dizziness. After learning from Clinic Related Defendants that she received one or more of the contaminated vials, Plaintiff went to Marion General Emergency Room on October 15, 2012 and was immediately sent to Marion Area Health Center due to her deteriorating health. At the health center, she was forced to undergo a spinal tap to test for fungal meningitis. Later that same day, Plaintiff was notified that due to an abnormal reading on the spinal tap, she needed to be admitted to the hospital immediately. Plaintiff spent four days in the hospital for observation. Following her hospital visit, Plaintiff's fungal meningitis diagnosis was confirmed. As a result of the diagnosis, she was put on multiple antifungal medications, and had to have numerous spinal taps and MRIs. Plaintiff still experiences headaches, body aches, fatigue, fever, confusion and dizziness on a daily basis. As a result of the injuries she sustained from the tainted fungal injection, Plaintiff has experienced, and will continue to experience great pain and suffering, mental anguish and loss of life's pleasures.

11. Plaintiff, Donna Montee, suffered the following damages as a result of the administration of NECC's drug: while being treated for fungal meningitis, Plaintiff experienced

mental, emotional, physical, and economic damages. She endured painful medical procedures, trauma, headaches, and exacerbation of pre-existing medical conditions. Plaintiff has incurred and will incur future expenses to obtain medical treatment and care for her injuries. As a direct result of being injected with a contaminated dose of methylprednisolone acetate, Plaintiff suffered injuries, conscious pain and suffering, emotional distress, economic loss, and other damages.

WHEREFORE, Plaintiff demands Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, cost of suit, and such further relief as the Court deems equitable and just.

Plaintiff reserves the right to amend this Complaint to add allegations and claims against individuals or entities currently omitted (in light of the Court's order permitting a Master Complaint naming defendants affiliated with NECC and currently participating in mediation by December 20, 2013) and to add or amend allegations against Defendants named herein based, in part, on further discovery.

SECOND COUNT

12. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as if set forth at length herein.

13. Plaintiff incorporates by reference the entirety of Plaintiff's First Amended Complaint and Jury Demand filed in the United States District Court for the Northern District of Ohio, Western Division on October 4, 2013, attached hereto as Exhibit 3.

WHEREFORE, Plaintiff demands Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully Submitted,

PLAINTIFF DONNA MONTEE,

By Her Attorneys,

/s/ Kimberly A. Dougherty

Robert K. Jenner (Maryland) *Pro Hac Vice to Be Filed*

Kimberly A. Dougherty (BBO# 658014)

Elisha N. Hawk (Maryland) *Pro Hac Vice to Be Filed*

JANET, JENNER & SUGGS, LLC

31 St. James Avenue

Suite 365

Boston, MA 02116

T: (617) 933-1265

F: (410) 653-9030

kdougherty@myadvocates.com

Date: December 20, 2013